

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

Charles O'Neal,

Plaintiff

v.

Michael Minev, *et al.*,

Defendants

Case No. 2:23-cv-00903-CDS-NJK

Order Dismissing and Closing Case

Pro se plaintiff Charles O'Neal brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Southern Desert Correctional Center. ECF No. 3-1. On July 13, 2023, this court ordered O'Neal to file a fully complete application to proceed *in forma pauperis* or pay the full \$402 filing fee on or before September 11, 2023. ECF No. 4. The court warned O'Neal that the action could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* with all three documents or pay the full \$402 filing fee for a civil action by that deadline. *Id.* at 2. That deadline expired and O'Neal did not file a fully complete application to proceed *in forma pauperis*, pay the full \$402 filing fee, or otherwise respond.

I. DISCUSSION

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the court must consider: (1) the public’s interest in expeditious resolution of litigation; (2) the court’s need to manage its docket; (3) the

1 risk of prejudice to the defendants; (4) the public policy favoring disposition of cases on their
 2 merits; and (5) the availability of less drastic alternatives. *See In re Phenylpropanolamine Prod. Liab.*
 3 *Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting *Malone*, 833 F.2d at 130).

4 The first two factors, the public's interest in expeditiously resolving this litigation and
 5 the court's interest in managing its docket, weigh in favor of dismissal of O'Neal's claims. The
 6 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
 7 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
 8 ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.
 9 1976). The fourth factor—the public policy favoring disposition of cases on their merits—is
 10 greatly outweighed by the factors favoring dismissal.

11 The fifth factor requires me to consider whether less drastic alternatives can be used to
 12 correct the party's failure that brought about the need to consider dismissal. *See Yourish v. Cal.*
 13 *Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less drastic alternatives
 14 *before* the party has disobeyed a court order does not satisfy this factor); *accord Pagtalunan v.*
 15 *Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002). Courts “need not exhaust every sanction short of
 16 dismissal before finally dismissing a case, but must explore possible and meaningful
 17 alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this court cannot
 18 operate without collecting reasonable fees, and litigation cannot progress without a plaintiff's
 19 compliance with court orders, the only alternative is to enter a second order setting another
 20 deadline. But issuing a second order will only delay the inevitable and further squander the
 21 court's finite resources because O'Neal ignored the first order. Setting another deadline is not a
 22 meaningful alternative given these circumstances. So the fifth factor favors dismissal. Having
 23 thoroughly considered these dismissal factors, I find that they weigh in favor of dismissal.

24 II. CONCLUSION

25 It is therefore ordered that this action is dismissed without prejudice based on Charles
 26 O'Neal's failure to file a fully complete application to proceed *in forma pauperis* or pay the full
 27 \$402 filing fee in compliance with this court's July 13, 2023, order. The Clerk of Court is directed
 28 to enter judgment accordingly and close this case. No other documents may be filed in this now-

1 closed case. If Charles O'Neal wishes to pursue his claims, he must file a complaint in a new case
2 and either pay the required filing fee or properly apply for *in forma pauperis* status.

3 DATED: October 2, 2023

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Cristina D. Silva
United States District Judge
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